



**Billing Code 4510–55**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS–R8–ES–2014–N113]**

**[FXES1120800000–134–FF08ECAR00]**

**Environmental Impact Statement; Major Amendment to the Multiple Species Conservation Program County of San Diego Subarea Plan for the Otay Hills Aggregate Quarry and Inert Debris Landfill, San Diego County, California**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent and request for comments.

**SUMMARY:** We, the Fish and Wildlife Service (Service), intend to prepare an environmental impact statement (EIS) under the National Environmental Policy Act regarding an application to amend the Endangered Species Act permit issued for the Multiple Species Conservation Program County of San Diego Subarea Plan (Subarea Plan). The EIS will evaluate the impacts of several alternatives related to the proposed issuance of an amended incidental take permit to the County of San Diego (applicant) for the quarry and landfill project in San Diego County, California. We request data,

comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party.

**DATES:** To ensure consideration, please send your written comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** To request further information or submit written comments, please use one of the following methods and note that your information request or comment is in reference to the “Major Amendment to the MSCP Subarea Plan”:

- *Email:* Karen\_Goebel@fws.gov. Include “Major Amendment to the MSCP Subarea Plan” in the subject line of the message.
- *U.S. Mail:* Field Supervisor, Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2177 Salk Ave, Suite 250, Carlsbad, California 92008.
- *In-Person Drop-off, Viewing, or Pickup:* Call 760–431–9440 to make an appointment during regular business hours to drop off comments or view received comments at this location.
- *Fax:* Field Supervisor, 760–431–9624; Attn.: “Major Amendment to the MSCP Subarea Plan.”

**FOR FURTHER INFORMATION CONTACT:** Ms. Karen Goebel, Assistant Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES**); telephone: 760–431–

9440. If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:** We intend to prepare an environmental impact statement (EIS) to evaluate the impacts of several alternatives related to the potential issuance of an amended incidental take permit (ITP) for the Multiple Species Conservation Program County of San Diego Subarea Plan (Subarea Plan) for the purpose of covering activities associated with the Otay Hills Aggregate Quarry and Inert Debris Landfill, located in San Diego County, California. The EIS will be a joint document with an environmental impact report (EIR) prepared by the County of San Diego under the California Environmental Quality Act.

The Subarea Plan is a multiple species habitat conservation plan for which the applicant holds an ITP (PRT–840414) for 85 covered species in San Diego County, California. The proposed quarry and landfill project is located on lands designated by the Subarea Plan as a “major amendment area,” where the incidental take authorization does not apply. The applicant proposes to amend the Subarea Plan and the ITP issued under section 10(a)(1)(B) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*; ESA). The proposed amendment will include measures necessary to minimize and mitigate the impacts, to the maximum extent practicable, of proposed taking of covered species resulting from construction and operation of the quarry and subsequent landfill operations within the “major amendment area.”

Along with the proposed Subarea Plan and ITP amendment, the applicant proposes to process an application for a Specific Plan Amendment, Major Use Permit, and Reclamation Plan for the Otay Hills Aggregate Mining and Inert Debris Landfill project, which is located within 10 parcels (APNs 648-050-12, 13, 14, and 17; 648-080-13, 14, and 25; 648-040-39 and 40; and 648-090-04) that total approximately 432 acres. Primary access to the site would be from the east end of Calzada De La Fuente Road, which connects to Alta Road 0.5 miles north of Otay Mesa Road.

If the amendment is approved, the applicant's permit would include as a covered activity within the major amendment area the aggregate mining and subsequent landfill of approximately 110 acres and associated conservation of 322 acres. Several species covered by the exiting Subarea Plan have been observed on or near the project site. The ITP would be amended to cover, within the major amendment area, eleven animal species (1 federally listed and 10 unlisted species) that could be taken, and 9 plant species (1 listed and 8 unlisted plant species) that could be adversely impacted by the aggregate mine and landfill. These 20 species are covered by the existing Subarea Plan. The ITP would also be amended to authorize the take of the federally listed endangered quino checkerspot butterfly (*Euphydryas editha quino*), which occurs on the project site and is not a covered species under the existing Subarea Plan. We will also evaluate potential impacts to the golden eagle under the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668c; Eagle Act). The golden eagle is a covered species under the existing Subarea Plan.

## **Background**

Section 9 of the ESA prohibits taking of fish and wildlife species listed as endangered or threatened under section 4 of the ESA. Under the ESA, the term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The term “harm” is defined in the regulations as significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The term “harass” is defined in the regulations as to carry out actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

However, under specified circumstances, the Service may issue permits that allow the take of federally listed fish and wildlife species, provided that the take that occurs is incidental to, but not the purpose of, an otherwise lawful activity. Regulations governing permits for endangered and threatened fish and wildlife species are at 50 CFR 17.22 and 17.32, respectively. The ESA’s take prohibitions do not apply to federally listed plants. Plant species would be included in the amended permit in recognition of the conservation measures provided to plants under the amended HCP and would receive assurances under the Service’s “No Surprises” rule.

Section 10(a)(1)(B) of the ESA authorizes the issuance of incidental take permits to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

- (1) The taking will be incidental;
- (2) The applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking;
- (3) The applicant will develop a proposed HCP and ensure that adequate funding for the plan will be provided;
- (4) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
- (5) The applicant will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP.

These same findings must be met for an amendment to the applicant's existing ITP. The applicant's ITP is valid until March 16, 2048.

Golden eagles and bald eagles (*Haliaeetus leucocephalus*) are protected under the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668c; Eagle Act), which prohibits the take of any eagles or any part, nest, or egg thereof. Take is defined as to "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb." Disturb is defined by the Service as "to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with

normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.”

An ESA section 10(a)(1)(B) may include bald and golden eagles as covered species. Pursuant to 50 CFR 22.11, an ESA section 10(a)(1)(B) permit constitutes a valid permit under the Bald and Golden Eagle Protection Act to take bald or golden eagles so long as such take is “compatible with the preservation of the bald or the golden eagle,” the standard that applies to Eagle Act permits. The golden eagle is a covered species under the existing Subarea Plan, and the applicant proposes to include the golden eagle as a covered species in the amended Subarea Plan and ITP. We will evaluate potential impacts to the golden eagle from the proposed covered activities and determine whether to include the golden eagle as a covered species in an amended ITP under applicable ESA and Eagle Act standards.

### **Environmental Impact Statement**

The EIS/EIR will consider the proposed action (i.e., the issuance of an amended Section 10(a)(1)(B) permit under the ESA) and a reasonable range of alternatives. A detailed description of the proposed action and alternatives will be included in the EIS/EIR. It is anticipated that several alternatives will be developed, which may vary by the level of conservation, impacts caused by the proposed action, or a combination of these factors. The proposed action and alternatives will be evaluated against the No-Action alternative, which assumes that no permit amendment will be issued. The No-

Action alternative represents estimated future conditions to which the proposed action's estimated future conditions can be compared.

*Proposed Alternative*

The proposed action is the issuance of an amendment to the Subarea Plan ITP (PRT-840414) to extend incidental take authorization for the Otay Hills aggregate quarry and inert debris landfill project. The proposed action will:

- (1) Reclassify 79.4 acres of the MSCP Subarea Plan from “major amendment area” to “take authorized area” to allow for future development;
- (2) Reclassify 15.8 acres of the MSCP Subarea Plan from “minor amendment area subject to special considerations” into “hardline preserve”;
- (3) Reclassify 306 acres of the MSCP Subarea Plan from “major amendment area” into “hardline preserve”;
- (4) Reclassify 3.4 acres of the MSCP Subarea Plan in the “minor amendment area” and 26.3 acres in the “minor amendment subject to special considerations area” to “take authorized area”; and
- (5) Provide take authorization for the quino checkerspot butterfly.

In combination, these actions would result in permanent conservation of 321.8 acres of high-quality habitat (connected to other conserved, high-value habitat areas) that



support listed and/or sensitive plant and animal species, which would contribute to the overall conservation goals of the region.

We anticipate that the following federally listed species will be included as covered species in the applicants' proposed amendment: (1) the endangered quino checkerspot butterfly (*Euphydryas editha quino*), (2) the threatened coastal California gnatcatcher (*Poliophtila californica californica*), and (3) the threatened Otay tarplant (*Deinandra conjugens*).

The 18 unlisted species proposed to be included in the amendment are the Otay manzanita (*Arctostaphylos otayensis*), San Diego goldenstar (*Bloomeria [Muilla] clevelandii*), Dunn's mariposa lily (*Calochortus dunnii*), Orcutt's birds' beak (*Cordylanthus orcuttianus*), Tecate cypress (*Cupressus forbesii*), variegated dudleya (*Dudleya variegata*), San Diego barrel cactus (*Ferocactus viridescens*), Gander's pitcher sage (*Lepechinia ganderi*), Thorne's hairstreak (*Callophrys [Mitoura] gryneus thornei*), Belding's orange-throated whiptail (*Aspidoscelis hyperythra beldingi*), San Diego horned lizard (*Phrynosoma coronatum blainvillii*), Cooper's hawk (*Accipiter cooperii*), rufous-crowned sparrow (*Aimophila ruficeps canescens*), golden eagle (*Aquila chrysaetos*), burrowing owl (*Athene cunicularia*), northern harrier (*Circus cyaneus*), mountain lion (*Puma concolor*), and mule deer (*Odocoileus hemionus fuliginata*).

The applicant would seek to amend the incidental take authorization to include those wildlife species that are likely to be taken or, in the case of plant species, otherwise

impacted, as a result of the covered activities within the 432-acre Otay Hills aggregate quarry and inert debris landfill project area. Other Subarea Plan–covered species and other candidate and federally listed species that are not likely to be taken by the covered activities, and would not be covered by the proposed amended ITP, may also be addressed in the EIS/EIR.

### *No-Action Alternative*

Under the No-Action Alternative, we would not issue a permit, and no construction aggregate extraction operation would occur on the project site. The project site would remain as it is today, consisting of undeveloped land crossed by a series of dirt roads used primarily by the U.S. Border Patrol for domestic security purposes. Management of conserved lands through the major amendment would not occur. No changes in the existing environment would be expected.

### **Environmental Review and Next Steps**

We will conduct an environmental review to analyze the impacts of the proposed action and a range of other reasonable alternatives. We will prepare a draft EIS, as part of the joint EIS/EIR, that will analyze the effects of each of the alternatives on the covered species and their habitats and on other resources, such as vegetation, wetlands, wildlife, geology and soils, air quality, water resources, water quality, cultural resources, land use, recreation, water use, local economy, and environmental justice.

We will publish a notice of availability and a request for comment on the draft EIS/EIR and the applicant's permit application, which will include the proposed amendment to the Subarea Plan. The draft EIS/EIR and proposed amendment are expected to be completed and available to the public for review and comment in the winter of 2015.

### **Public Comments**

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on this notice. We will consider these comments in developing a draft EIS and in the development of the amendment to the County of San Diego's ITP for its Subarea Plan. We particularly seek comments on the following:

- (1) Biological information and data concerning the species proposed for coverage under the amendment to the HCP;
- (2) Additional information concerning the range, distribution, population size, and population trends of the species;
- (3) Proposed covered activities in the amendment area and their possible impacts on the species;
- (4) The presence of archeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns that are

required to be considered in project planning by the National Historic Preservation Act (Pub. L. 102–575); and

(5) Identification of any other environmental issues that should be considered with regards to the proposed development and permit action.

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section.

Comments and materials we receive, as well as supporting documentation we use in preparing the EIS document, will be available for public inspection by appointment, during normal business hours, at our office (see **FOR FURTHER INFORMATION CONTACT**).

### **Public Availability of Comments**

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority**

We publish this notice under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*; NEPA), and its implementing regulations in the Code of Federal Regulations (CFR) at 40 CFR 1501.7, 40 CFR 1506.6, and 1508.22, as well as in compliance with section 10 of the ESA (16 U.S.C. 1531 *et seq.*)

Date: August 12, 2014.

**Alexandra Pitts,**  
**Deputy Regional Director,**  
**Pacific Southwest Region,**  
**Sacramento, California.**

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